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No. 99-1730

# In the Supreme Court of the United States

SILVIA H. GARCIA,

*Petitioner*,

*v.*

MONROE JONES,

*Respondent.*

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

## BRIEF OF 37 STATES AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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## QUESTION PRESENTED

Are prisoners required by 42 U.S.C. 1997e(a), as amended by the Prison Litigation Reform Act, to exhaust administrative remedies before filing suit for damages?

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## STATEMENT OF *AMICI* INTEREST

California's petition implicates the continuing viability of one of the States' key tools for managing their prisons and jails – inmate grievance systems and similar dispute resolution programs. The decision below diminishes the effectiveness of those systems by allowing prisoners to "make a federal case" out of routine disputes with correctional officials, and in the process, deprives the States of the opportunity to resolve inmates' concerns internally – before litigation.

Those dispute resolution systems serve a vital function in the States' management of their growing prison and jail populations, providing an inexpensive and effective way for dissatisfied prisoners to point out internal practices that may need improvement. "For the prison administrator[,] this involves *using* the system beyond its day-to-day effects: periodically reviewing the grievances to identify patterns, to anticipate problems, and to formulate policies and procedures that respond to them." S. Brakel, Administrative Justice In The Penitentiary: A Report on Inmate Grievance Procedures, 1982 Am. Bar Founda. Res. J. 111, 129 (1982) (emphasis in original). Indeed, that vital impetus for self-correction was a primary reason that grievance systems were initially implemented. V. McArthur, *Inmate Grievance Mechanisms: A Survey of 209 American Prisons*, 38 Federal Probation 41, 44 (Dec. 1974).

Those systems have the additional benefit of resolving disputes that would otherwise end up in court. They are quite effective in that regard, with studies indicating that a substantial number of inmate complaints lead to modifications of official policy. *Managers Need Comprehensive Systems for Assessing Effectiveness and Operation of Inmate Grievance Mechanisms* (General Accounting Office, Oct. 17, 1977) 2-3. Those grievance-

prompted changes avert many lawsuits that would otherwise "require defendants and other staff members to put in long hours conferring with counsel, answering interrogatories, giving depositions, preparing for trial, 'managing' the press and testifying at trial. Many non-frivolous suits concern small monetary sums, and the time devoted to them by administrators is disproportionate to the amounts involved." G. Cole, R. Hanson, and J. Gilbert, *Alternative Dispute-Resolution Mechanisms for Prisoner Grievances: A Reference Manual for Averting Litigation*, (National Institute of Corrections, U. S. Dept. of Justice 1984) 5-6.

Moreover, internal resolution of grievances costs much less than litigation. Although it costs States an average of between $1,200 and $1,500 to litigate a prisoner's grievance, resolving the same grievance through administrative proceedings costs an average of $166. G. Cole, and J. Gilbert, *Alternate Dispute Resolution Mechanisms for Prisoner Grievances*, 9 Just. Sys. J. 306, 308 n.1, 315 (1984).

Congress understood the importance of those functions when, in 1996, it passed the Prison Litigation Reform Act ("PLRA"), modifying 42 U.S.C. 1997e(a) to mandate exhaustion of administrative remedies before a prisoner sues. The decision below ignores Congress's intent, reimposing the high operational and legal costs that the PLRA was designed to limit. That decision is wrong, and left undisturbed, it and others like it will exact a costly toll of both time and money from States, which will be forced once more to battle in federal court about issues that often can be resolved much more efficiently through grievance programs. The States have a vital interest in seeing that the congressional intent embodied in the PLRA is carried out by the courts, and therefore urge the Court to review the judgment below.

## REASONS FOR GRANTING THE WRIT

Two compelling reasons support certiorari: (1) the importance of the question presented to day-to-day prison operations; and (2) the great uncertainty that conflicting circuit court opinions have created for both State officials and for the lower federal courts.

### I. The Question Presented Is Critically Important To The Nation's More Than 4,372 Prisons And Jails.

The problems facing our prisons and jails "are complex and intractable . . . requir[ing] expertise, comprehensive planning, and the commitment of resources, all of which are peculiarly within the province of" corrections professionals. *Procunier v. Martinez*, 416 U.S. 396, 405 (1974). The decision below, and others like it in jurisdictions containing some of the nation's largest prisons and jails, greatly complicates that task.

State and local governments now operate at least 4,372 prisons and jails. Criminal Justice Institute, Inc., *The Corrections Yearbook—1998*, 67 (1999); K. Maguire & A. Pastore, *Sourcebook of Criminal Justice Statistics 1996*. Because inmate grievance systems provide valuable operational data and resolve significant numbers of disputes, all but two States have established some type of inmate grievance system. Broad coverage has long been a key design principle for such systems because, as the General Accounting Office has recognized, a grievance system "must be applicable to as broad a range of issues as possible" to be effective. *Grievance Mechanisms in State Correctional Institutions and Large City Jails* (General Accounting Office, June 17, 1977) at 2.

The decision below encourages exactly the opposite result. It holds that prisoners may ignore administrative

remedies whenever they seek damages that are not available through grievance systems. That reading of § 1997e(a) creates an exception that effectively abrogates the statute's general rule, because almost all prisoners seek damages, and no State except Louisiana has a grievance system that authorizes damages for anything other than the loss of personal property. Similar precedents control in the Fifth and Tenth Circuits, which together with the Ninth Circuit, contain some of the largest prison and jail systems in the country. *See Whitley v. Hunt*, 158 F.3d 882 (5th Cir. 1998); *Garrett v. Hawk*, 127 F.3d 1263 (10th Cir. 1997); *The Corrections Yearbook—1998*, 2, 210.

That interpretation of § 1997e(a) in those circuits will have palpable effects inside prison walls, undermining the effectiveness of administrative dispute resolution systems where they are needed most:

> *[If] a prisoner may circumvent state agencies by bringing a section 1983 action, corrections personnel may not become aware of, and hence may not be able to rectify, administrative deficiencies* until federal litigation is commenced. . . . Rather than have state policymakers determine the appropriate reform, the federal judiciary interposes its own judgment.
>
> * * *
>
> *Although this might benefit the individual prisoner bringing the action, problems affecting the entire prison population may remain unresolved.*

S. Russo, *State Prisoners and the Exhaustion of Administrative Remedies: Section 1983 Jurisdiction and the*

*Availability of Adequate State Remedies*, 7 Seton Hall L. Rev. 366, 392 and n.148 (1976) (emphasis added). The PLRA sought to eliminate that problem, but the perpetuation of the pre-PLRA approach, exemplified by the decision below, could not have come at a worse time, for the States' prison systems are facing ever-more-challenging burdens as their populations continue to grow.

Corrections officials face significant new challenges in housing mentally ill prisoners, prompting unprecedented, and still evolving, changes to operating procedures. H. Steadman & B. Veysey, *Providing Services for Jail Inmates with Mental Disorders* (National Institute of Justice, U. S. Dept. of Justice 1997); P. Rubin & S. McCampbell, *The Americans With Disabilities Act and Criminal Justice: Mental Disabilities and Corrections* (National Institute of Justice, U. S. Dept. of Justice 1995); F. Cohen, *Disciplinary Proceedings and Mental Illness*, 4(4) Corrections Managers' Report 3 (American Correctional Association 1998). At the same time, the prison population now includes more elderly inmates and more young offenders, and both groups need special accommodations. S. Sampson, *Project for Older Prisoners*, 1(2) Corrections Managers' Report 11 (1995); E. Loughran, *Statistics, Predictions and Reality: How Do We Make Sense of Changing Juvenile Crime?* 1(1) Corrections Management Quarterly 67, 70-71 (1997).

Last, but by no means least, there has been a "massive expansion of the female inmate population," raising such unique challenges as pregnancy and child care issues, the difficulties inherent in cross-gender supervision, and the need for a distinct custodial atmosphere. M. Fleisher, R. Rison & D. Helman, *Female Inmates: A Growing Constituency in the Federal Bureau of Prisons*, 1(4) Corrections Management Quarterly 28, 29 (1997); M. Morash, T. Bynum & B. Koons, *Women Offenders: Programming Needs and Promising Approaches*, (National Institute of Justice, U. S. Dept. of

Justice 1998); C. Stewart, *Management Response to Sexual Misconduct Between Staff and Inmates*, 2(2) Corrections Management Quarterly 81 (1998).

The combined effect of those changes has been to put new stresses on correctional systems. The States must cope with novel challenges affecting unprecedented numbers of prisoners, and they must do so with growing numbers of new staff. *The Corrections Yearbook—1998*, 142 (51,841 new correctional employees were hired in 1997). Although they conscientiously try to, and usually succeed in, meeting those challenges, shortfalls are inevitable. Grievance systems provide invaluable data about the nature and potential solutions for the resulting problems. The decision below and others like it deprive officials of that information, encouraging wasteful litigation instead of practical solutions. That may benefit individual plaintiffs, but in the end, it hurts far more prisoners.

Further, the approach adopted below increases the burden of litigation. Many matters that would otherwise be resolved internally will go directly to the federal courts. Federalizing those disputes requires the diversion of scarce State resources because "during the course of litigation, administrators and other corrections personnel may be called as witnesses or be named as parties to the proceedings. As a consequence, these individuals are diverted from their managerial and supervisory functions. The result is a less efficient institutional operation." S. Russo, *supra*, at 393. *See also* G. Cole, R. Hanson & J. Gilbert, *supra* at 5-6 (emphasis added). Although the number of prisoner suits has declined since the passage of the PLRA, their burden is still substantial and is likely to increase if the gatekeeping function of § 1997e(a) can be sidestepped with a simple demand for damages. Indeed, the record here and elsewhere shows that inmates have already discovered that way around the PLRA. Pet. App. at 2a (prisoner dropped claim for

injunctive relief in response to exhaustion defense); *Whitley v. Hunt*, 158 F.3d 882, 884 (5th Cir. 1998) (same).

In sum, the Ninth Circuit's decision and similar decisions elsewhere will make it harder for corrections officials to deal with day-to-day operational problems. Instead, resolution of those problems will become the business of the federal courts, which "are not equipped by experience or otherwise to 'second guess' the decisions of . . . [prison and jail] administrators." *Jones v. North Carolina Prisoners' Labor Union*, 433 U.S. 133, 137 (1977) (Burger, C. J., concurring). That hardly "reflects the . . . healthy sense of realism" that recognizes "that needed reforms in the area of prison administration must come, not from the federal courts, but from those with the most expertise in this field – prison administrators themselves." *Id.* This significant impact on State and local prison and jail operations shows why this case merits review, even apart from the clear circuit split on the question.

## II. The Question Presented Is Consuming An Inordinate Amount Of Judicial Resources.

The sharp split among the circuits has created great uncertainty not only for the nation's prison administrators, but for lower federal courts, which must apply the statute's language to literally thousands of cases every year. Three circuits have squarely held that inmates need not pursue relief through prison grievance systems if those administrative channels do not offer money damages to the inmates. *See Whitley v. Hunt*, 158 F.3d 882, 885-887 (5th Cir. 1998); *Rumbles v. Hill*, 182 F.3d 1064, 1068-69 (9th Cir. 1999), *cert. denied*, 120 S. Ct. 787 (2000); *Garrett v. Hawk*, 127 F.3d 1263, 1266 (10th Cir. 1997). Two other circuits have reached the opposite conclusion. *See Wyatt v. Leonard*, 193 F.3d 876, 878-79 (6th Cir. 1999); *Perez v. Wisconsin Dept. of Corrections*, 182 F.3d 532, 537-38 (7th Cir. 1999). An

additional two circuits have held that prisoners seeking both damages and injunctive relief must first pursue their claims through available prison grievance systems, even if those administrative channels offer only injunctive remedies. *Nyhuis v. Reno*, 204 F.3d 65, 67 (3rd Cir. 2000); *Alexander v. Hawk*, 159 F.3d 1321, 1325-1328 (11th Cir. 1998). And district courts in the circuits where the issue remains unresolved have likewise wrestled with the question. *See, e.g., Smith v. Stubblefield*, 30 F. Supp. 2d 1168, 1173-74 (E.D. Mo. 1998) (requiring exhaustion of administrative remedies); *Beeson v. Fishkill Correctional Facility*, 28 F. Supp. 2d 884 (S.D.N.Y. 1998) (same); *Langford v. Couch*, 50 F. Supp.2d 544, 548 (E.D. Va. 1999) (same).

"Determining the proper scope of the exhaustion requirement in § 1997e will significantly affect the dockets" of federal courts. *Wright v. Hollingsworth*, 201 F.3d 663, 666 (5th Cir. 2000). Although other provisions of the PLRA have reduced the number of prisoner cases in the federal courts, many thousands of new cases are filed every year. Indeed, more than 25,000 new prisoner cases were filed in 1999, while more than 17,000 prisoner filings burdened the courts of appeals. L. Meachem, *Judicial Business of the United States Courts: 1999 Report of the Director* (Administrative Office of the United States Courts, 1999). The Ninth Circuit's decision – and others like it – will frustrate Congress's efforts to channel inmate grievances away from overloaded federal courts. The uncertainty generated by the differing circuit-court opinions on this issue of great importance to the States shows that guidance from this Court is needed now.

## CONCLUSION

For the foregoing reasons, the *amici* States urge the Court to grant the writ.

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